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10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA  
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13 ROBERTO COVARRUBIAS-BARELA,

14 Petitioner,

15 v.

16 UNITED STATES OF AMERICA,

17 Respondent.  
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)  
) Civ. No. 12-2704GT  
) Cr. No. 10-2268GT  
)

) **ORDER**  
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19 On November 2, 2012, Petitioner, Roberto Covarrubias-Barela ("Mr. Covarrubias"), filed  
20 a Motion to Depart Downward from his previously imposed sentence. The Court addresses this  
21 Motion as a Motion to Vacate, Correct or Set Aside Sentence pursuant to 28 U.S.C. § 2255  
22 ("Motion"). For the reasons stated below, Mr. Covarrubias' is **DENIED**.

23 First, Mr. Covarrubias pled guilty, pursuant to a written plea agreement, to one count of  
24 Deported Alien Found in the United States, in violation of 8 U.S.C. § 1325. In the written plea  
25 agreement, Mr. Covarrubias explicitly waived his right to appeal and/or collaterally attack his  
26 conviction or sentence. Moreover, Mr. Covarrubias agreed to the + 16 enhancement for his prior  
27 conviction of Transportation of Illegal Aliens. The Ninth Circuit has long acknowledged that the  
28 terms of a plea agreement are enforceable. *See, United States v. Baramdyka*, 95 F.3d 840, 843 (9th


1 Cir. 1996), *cert. denied*, 117 S.Ct. 1282 (1997). Since Mr. Covarrubias expressly waived his  
2 statutory right to appeal or collaterally attack his sentence in his plea agreement, Mr. Covarrubias  
3 is now precluded from challenging that sentence pursuant to 28 U.S.C. § 2255. *See, United States*  
4 *v. Abarca*, 985 F.2d 1012, 1014 (9th Cir. 1993) (holding that a knowing and voluntary waiver of  
5 a statutory right is enforceable).

6 Mr. Covarrubias also requests a downward departure because the Sentencing Guidelines no  
7 longer require "recency points." However, no recency points were added in Mr. Covarrubias' case.  
8 Accordingly,

9 **IT IS ORDERED** that Mr. Covarrubias' Motion to Vacate is **DENIED**.

10 **IT IS SO ORDERED.**

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13 1-9-15  
14 date

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GORDON THOMPSON, JR.  
United States District Judge

cc: All parties and Probation Department